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United States 1360

# Circuit Court of Appeals

For the Ninth Circuit. /

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THE UNITED STATES OF AMERICA on the  
Relation of THOMAS W. MILLER, Alien  
Property Custodian of the United States of  
America,

Plaintiff in Error,

vs.

C. W. CLAUSEN, as State Auditor of the State of  
Washington,

Defendant in Error.


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## Transcript of Record.

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Upon Writ of Error to the United States District Court  
of the Western District of Washington,  
Southern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## **Names and Addresses of Attorneys of Record.**

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DIX H. ROWLAND, Esquire,  
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M. H. WIGHT, Esquire,  
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Olympia, Washington.  
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GUIE & HALVERSTADT,  
306 Marion Building, Seattle, Washington.  
Of Counsel for Defendant in Error. [1\*]

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\*Page-number appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States for the  
Western District of Washington, Southern  
Division.

No. 4116.

THE UNITED STATES OF AMERICA on the  
Relation of THOMAS W. MILLER, Alien  
Property Custodian of the United States of  
America,

Plaintiff and Relator,

vs.

C. W. CLAUSEN, State Auditor of the State of  
Washington,

Defendant and Respondent,

**Petition and Affidavit for Writ of Mandamus.**

To the Honorable Judge of the above-entitled court:

Comes now the plaintiff and relator, above named,  
and complaining of the above-named defendant and  
respondent, alleges and says:

I.

That the above-named plaintiff is the duly appointed, qualified and acting Alien Property Custodian of the United States of America, appointed by the President of the United States under and by virtue of an act of Congress of the United States of America, known as the "Trading with the Enemy Act," passed on the 6th day of October, 1917, and the acts of Congress amendatory and supplementary thereto, possessing all the powers granted by said acts of Congress and the executive orders issued in pursuant thereof.

## II.

That at all times herein mentioned, the defendant, C. W. Clausen was the duly elected, qualified and acting State Auditor of the State of Washington, and it is a part of his official duties to audit claims against the Accident Fund of [2] the State Treasury of the State of Washington, and to issue warrants thereon upon vouchers provided by the Department of Labor and Industries for claims against said fund that have been regularly passed upon and allowed by said Department of Labor and Industries; that said Accident Fund is under the control of the Director of Labor and Industries of the State of Washington and the Supervisor of Industrial Insurance of the Department of Labor and Industries of the State of Washington, who alone can authorize the issuance of vouchers against the said fund;

## III.

That the said defendant and respondent is an inhabitant of this judicial district.

## IV.

That prior to the commencement of this action, in the month of May, 1923, there was issued to the plaintiff and relator, a certain voucher for the sum of \$24,348, upon said Accident Fund for the payment of certain duly allowed claims named in said voucher; that said voucher was in due form and in accord with the rules and practices of said Department, the same having been issued by said Department in compliance with a judgment of this Court, made and entered November 1st, 1922, in a case in



which Thomas W. Miller, Alien Property Custodian was the plaintiff and Edward Clifford, as Supervisor of the Department of Labor and Industries of the State of Washington and another were defendants, and a judgment of the Circuit Court of Appeals made and entered on March 14, 1923, and a certain mandate of said last named court, entered thereafter by said District Court in the office of the Clerk thereof; that a copy of said voucher is hereto attached, marked Exhibit "A" and is made a part hereof. [3]

#### V.

That said voucher was filed with the said respondent on or about the date of its issuance by direction of said Department; that on the 26th day of May, 1923, the plaintiff and relator presented a copy of said voucher to the respondent who already had in his possession the original voucher, at the office of the State Auditor of the State of Washington and requested that he audit the same as a claim against said "Accident Fund" and issue to him the said Thomas W. Miller, Alien Property Custodian of the United States of America, a warrant upon said "Accident Fund" in accord with the terms of said voucher, which said requests were then and there refused; that said refusals were without warrant of law, arbitrary and in a matter in which said defendant had no discretion.

#### VI.

That the said plaintiff and relator has no plain, speedy or adequate remedy in the ordinary course of law.



## VII.

That plaintiff desires said warrant that he may collect the same and distribute the funds represented thereby to those who shall be designated by acts of Congress to be entitled thereto and that he may perform his duties as an executive of the and representing the President of the United States and carry out the treaty obligations of the United States of America with the foreign governments whose subjects are interested therein.

## VIII.

That the acts of said respondent in refusing to audit said voucher and issue said warrant are seriously interfering with plaintiff and relator in performing his official duties in carrying out the reconstruction problems resulting from the late war with Germany, Austria and Bulgaria and is [4] seriously interfering with the President of the United States of America whose representative relator is in carrying out the obligations and duties which he owes to claimants of and citizens of foreign governments with which the United States of America has treaty obligations to perform.

## IX.

That plaintiff and relator as an executive official under the President of the United States of America has been interfered with, put to great expense, and damages by the arbitrary acts of said respondent above set forth.

## X.

That Harry G. Rowland is the duly appointed,

qualified and acting representative of the plaintiff and relator.

WEREFORE plaintiff prays that an order of this Court shall be entered directed to said respondent requiring that he answer this petition; that an alternative writ of mandate shall issue directed to said defendant under the hand and seal of this Court requiring that he shall either forthwith audit said voucher and issue a warrant upon the Accident Fund of the State of Washington on said voucher to plaintiff in the sum of Twenty-four Thousand Three Hundred Forty-eight (\$24,348) Dollars, or that he shall show cause before this Court at a date to be designated by the Court why he has not done so.

That upon the return of said alternative writ that a peremptory writ shall issue to the defendant directing him to audit said voucher and issue said warrant; that plaintiff shall recover of and from the defendant his costs and disbursements herein sustained.

THOMAS W. MILLER,  
Alien Property Custodian of the United States of  
America.

By HARRY G. ROWLAND,  
His Representative.

H. G. & DIX H. ROWLAND,  
Attorneys for Plaintiff, 410 Equitable Building,  
Tacoma, Washington. [5]

State of Washington,  
County of Pierce,—ss.

Harry G. Rowland, being first duly sworn, on oath deposes and says: that he is the duly appointed, qualified and acting representative of Thomas W. Miller, Alien Property Custodian of the United States of America, the plaintiff and relator in the above-entitled action; that he has read the foregoing affidavit and complaint, knows its contents, and that the same is true;

That affiant makes this affidavit for and on behalf of the plaintiff and relator above named.

HARRY G. ROWLAND.

Subscribed and sworn to before me this 31st day of May, 1923.

[Seal] CHAS. W. STEWART,  
Notary Public in and for the State of Washington,  
Residing at Tacoma.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 8, 1923. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [8]

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[Title of Court and Cause.]

No. 4116.

**Order for Alternative Writ of Mandamus.**

This cause coming on to be heard this 8th day of June, 1923, upon the application of the plaintiff and

relator above named for an order of Court directing that there shall issue an alternative writ of mandamus in accord with the prayer of the petition and affidavit on file in the above-entitled action, and it appearing to the Court that prior to the commencement of this action in the month of May, 1923, there was issued to the plaintiff and relator a certain voucher for the sum of \$24,348 upon the "Accident Fund" of the State of Washington for the payment of certain duly allowed claims named in said voucher, due to former alien enemies of the United States of America; that said voucher was in due form and in accord with the rules and practices of the Department of Labor and Industries of the State of Washington, the same having been issued by said Department in compliance with a judgment of this Court made and entered November 21st, 1922, in a case in which Thomas W. Miller, Alien Property Custodian, was the plaintiff, and Edward Clifford, Supervisor of the Department of Labor and Industries of the State of Washington and another were defendants, and a judgment of the Circuit Court of Appeals made and entered March 14, 1923, and a certain mandate of the said last- [9] named Court made and entered thereafter by this Court in the office of the Clerk thereof, a copy of which voucher is attached to the original affidavit and complaint herein, is marked Exhibit "A" and is made a part thereof; that said voucher was filed with respondent on or about the date of its issuance by direction of said Department and directed that the said respondent should issue to Thomas W.

Miller, Alien Property Custodian of the United States, a warrant upon the Accident Fund of the State of Washington in the sum of \$24,348 in payment of said claims; that the said plaintiff and relator presented said voucher to the State Auditor of the State of Washington prior thereto, requesting that he audit the same and issue to Thomas W. Miller, Alien Property Custodian, plaintiff and relator, a warrant upon said Accident Fund in accord with the terms of said voucher which requests were refused; that said refusals were without warrant of law, arbitrary and in a matter in which the said respondent has no discretion; that the plaintiff and relator has no plain, speedy or adequate remedy in the ordinary course of law.

IT IS THEREFORE ORDERED that a writ of defendant shall be served with a copy of the original affidavit and petition in the above-entitled case and shall answer the same;

IT IS FURTHER ORDERED that a writ of mandamus shall issue under the hand and seal of the above-entitled court, directed to the said C. W. Clausen as State Auditor of the State of Washington, the respondent above named, requiring that he shall forthwith audit the said voucher above referred to and shall issue to Thomas W. Miller, Alien Property Custodian of the United States, a Warrant upon the Accident Fund of the State of Washington in payment of the claims described in said voucher, or that he shall show cause before this Court on the 25th day of June, 1923, at the courtroom thereof in the courthouse of the United



States District Court in the city [10] of Tacoma, in Pierce County, Washington, why he has not done so; that a copy of such writ shall be served upon the defendant and respondent at least ten (10) days before the return day of said alternative writ, together with a copy of the original affidavit and complaint in this action.

IT IS FURTHER ORDERED that service of the affidavit and complaint and of said alternative writ may be made either by the United States Marshal for this District, or the Sheriff of Thurston County, Washington, in like manner, as a summons in a civil action is served.

Done in open court this 8th day of June, 1923.

EDWARD E. CUSHMAN,

Judge of the District Court of the United States  
for the Western District of Washington,  
Southern Division.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 8, 1923. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy. [11]

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[Title of Court and Cause.]

No. 4116.

**Alternative Writ of Mandamus.**

The United States of America to C. W. Clausen,  
State Auditor of the State of Washington,  
defendant and respondent, GREETINGS:

WHEREAS, it appears by the affidavit and verified petition of Harry G. Rowland, representative

of Thomas W. Miller, Alien Property Custodian of the United States, the plaintiff and relator above named and the party beneficially interested herein, that the plaintiff and relator is the holder of a certain voucher for the sum of \$24,348 drawn to the Auditor of the State of Washington against the "Accident Fund" so called, for the payment of duly allowed claims named in said voucher; that said voucher was in due form and in accord with the rules and practices of the Department of Labor and Industries of the State of Washington, the same having been issued by the said Department in compliance with the judgment of this Court, made and entered November 1st, 1922, in a case in which Thomas W. Miller, Alien Property Custodian of the United States was the plaintiff, and Edward Clifford, Supervisor of the Department of Labor and Industries of the State of Washington and another were defendants, and a judgment of the Circuit Court of Appeals made and entered on March 14th, 1923, and a certain mandate of the last named Court entered thereafter by this Court in the office of the [12] Clerk thereof; that a copy of the said voucher is attached to the affidavit and complaint filed by the plaintiff herein; that said voucher was filed with the said respondent on or about the date of its issuance by direction of the Department of Labor and Industries of the State of Washington; that on the 26th day of May, 1923, the plaintiff and relator presented a copy of said voucher to the respondent who already had in his possession the original voucher at the office of the State Auditor of the State of



Washington, and a request made that the respondent audit the same as a claim against the said "Accident Fund" and issue to him, the said Thomas W. Miller, Alien Property Custodian of the United States of America, a warrant upon the said "Accident Fund" in the sum of \$24,348 and in accord with the terms of said voucher, which said requests were then and there refused; that said refusals were without warrant of law, arbitrary and in a matter in which defendant had no discretion; that the plaintiff has no plain, speedy or adequate remedy in the ordinary course of law.

THEREFORE we do command you that you answer the petition and affidavit filed in behalf of the relator, a copy of which shall be served upon you, together with this writ; that immediately after the receipt of this writ you audit the said voucher and issue to Thomas W. Miller, Alien Property Custodian of the United States of America, a warrant upon the "Accident Fund" of the State of Washington for the sum of \$24,348, as provided by the said voucher, or that you show cause before this Court at the courtroom thereof in the courthouse of the United States District Court for the Western District of Washington, Southern Division, in the City of Tacoma, County of Pierce, on the 25th day of June, 1923, at the opening of the Court on that day, why you have not done so. [13]

WITNESS the Honorable EDWARD E. CUSHMAN, Judge of the United States District Court for the Western District of Washington, Southern

Division, and the seal of said Court, this 8th day of June, 1923.

[Seal]

F. M. HARSHBERGER,

Clerk.

By Alice Huggins,

Deputy Clerk.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Jun. 8, 1923. F. M. Harshberger, Clerk, By Ed. M. Lakin, Deputy. [14]

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[Title of Court and Cause.]

No. 4116.

**Demurrer.**

Comes now the defendant and respondent, by and through his attorneys, Honorable John H. Dunbar and M. H. Wight, attorney general and assistant attorney general, respectively, of the State of Washington, and demurs to the petition and affidavit of the plaintiff and relator herein upon the grounds and for the reasons that, as appears upon the face of said petition and affidavit:

I.

That the above-named Court has no jurisdiction of the defendant and respondent, or of the subject matter of this action.

II.

That the petition and affidavit of the plaintiff and relator on file herein does not state facts sufficient to constitute a cause of action.

WHEREFORE, defendant and respondent prays  
for the order of this Court sustaining this demurrer.  
GUIE & HALVERSTADT,  
Of Counsel.

JOHN H. DUNBAR,  
Attorney General,  
M. H. WIGHT,  
Assistant Attorney General,  
Attorneys for Defendant and Respondent

[Endorsed]: Filed in the United States District  
Court, Western District of Washington, Southern  
Division. Jun. 25, 1923. F. M. Harshberger,  
Clerk. By Ed. M. Lakin, Deputy. [15]

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[Title of Court and Cause.]

No. 4116.

**Memorandum Decision on Demurrer.**

Filed July 14, 1923.

H. G. & DIX H. ROWLAND, for Relator.  
Hon. JOHN H. DUNBAR, Attorney General,  
Hon. M. H. WIGHT, Ass't. Attorney General,  
GUIE & HALVERSTADT, for Respondents.

CUSHMAN, D. J.—Relator cites and relies upon  
the following cases:

Commercial Trust Co. of New Jersey vs.  
Thomas W. Miller, Alien Property Custodian,  
Adv. Op. U. S. Sup. Ct. No. 14, pp.  
531 to 564; May 15, 1923; [16]

- Charles Ahrenfeldt vs. Thomas W. Miller,  
Alien Property Custodian, Adv. Op. U. S.  
Sup. Ct. No 14, p. 546, May 15, 1923;  
Kahn vs. Anderson, 255 U. S. 1, 65 Law Ed.  
469, 41 Sup. Ct. R. 224;  
Vincenti vs. U. S. 272 Fed. 114, 256 U. S. 700,  
65 L. Ed. 1178, 41 Sup. Ct. Rep. 538;  
Kohn vs Kohn, 264 Fed. 253;  
Miller vs. U. S., 78 U. S. 268;  
Miller vs. Camp, 280 Fed. 520;  
In re Miller, 281 Fed. 773;  
Garvan vs. Marconi Wireless Tel. Co., 275 Fed.  
486;  
Garvan vs. \$20,000 Bonds, 265 Fed. 477;  
Wenatchee Produce Company vs. Great North-  
ern Railway, 271 Fed. 784;  
Central Union Trust Co. vs. Garvan, 254 U. S.  
550;  
Stoehr vs. Wallace, 255 U. S. 239;  
Simon vs. Am. Exchange Bank, Decided De-  
cember, 1922;  
Poindexter vs. Greenhow, 114 U. S. 270, 29 Law  
Ed. 191;  
Board of Liquidation et al. vs. Henry S. Mc-  
Comb, 92 U. S. 531; 35 L. E. 623;  
State vs. Toole, 26 Mont. 22; 66 Pac. 496; 91  
Am. St. Reports, 386;  
Chaffin vs. Taylor, 116 U. S., 571; 29 Law Ed.,  
728;  
State ex rel. Gillette vs. C. W. Clausen, 44  
Wash. 437;  
Abernathy vs. Medical Lake, 9 Wash. 112;

- Union Sav. B. & T. Co. vs. Gelbach, 8 Wash. 497;  
Cloud vs. Sumas, 9 Wash. 399;  
La France Fire Engine Co. vs. Davis, 9 Wash. 600; [17]  
Mason vs. Purdy, 11 Wash. 591;  
Smith vs. Ormsby, 20 Wash. 396;  
State ex rel. Porter vs. Headlee, 18 Wash. 220;  
State ex rel. Dahlquist vs. Van Wick, 20 Wash. 391;  
American Bridge Company vs. Wheeler, 35 Wash. 40;  
State ex rel. Maddaugh vs. Ritter, 74 Wash. 649;  
A. I. Beach vs. Andrew Olson et al., 91 Wash. 56;  
Savage vs. Sternberg, 67 Am. St. Rpts. 751;  
Brownell vs. Town of Greenwich, 22 N. E. 24-27, 114 N. Y. 518; 4 L. R. A. 684;  
State vs. Pierce, 52 Kan. 521; 35 Pac. 19-22;  
Corning vs. Meade County Commissioners, 102 Fed. 57;  
State vs. Akers, 92 Kan. 169; 140 Pac. 637;  
Jerome vs. Rio Grande County Commissioners, 18 Fed. 873;  
Bank of Calif. vs. Shaber, 55 Cal. 322;  
State vs. Gandy, 12 Neb. 232;  
Busch vs. Geisy, 16 Ore. 355;  
Day vs. Callow, 39 Cal. 593;  
Lankford vs. Platte Iron Works, 235 U. S. 461;  
Rolston vs. Missouri Fund Commissioners, 120 U. S. 390;

- Ruling Case Law, Sec. 148, Vol. 18;  
Ray vs. Wilson, 29 Florida, 342; 42 L. R. A.  
775;  
Masses Publishing Co. vs. Patten, 246 Fed. 24;  
U. S. vs. Casey, 247 Fed. 362; [18]  
Story vs. Perkins, 243 Fed. 997;  
McCormick vs. Humphrey, 27 Ind. 144;  
Merchants, etc. Bank vs. Union Bank, 25 La.  
387;  
U. S. vs. Casey, 247 Fed. 362;  
Tarble's Case, 13 Wall. 397, 20 U. S.;  
Same 80 U. S. 397-413;  
Miller, Executor vs. U. S. 78 U. S. 268-331;  
Jefferson Publishing Co. vs West, 245 Fed. 585;  
U. S. vs. Pierce, 245 Fed. 878;  
U. S. vs. Sugar, 243 Fed. 423;  
Storey vs. Perkins, 243 Fed. 997;  
U. S. vs. Sugarman, 245 Fed. 604;  
U. S. vs. Stephens, 245 Fed. 956;  
Angelus vs. Sullivan, 246 Fed. 54;  
State vs. Hohm (Minn.), 166 N. W. 181;  
Cohens vs. Virginia, 6 Wheat. 264;  
Railroad Company vs. Miss., 102 U. S. 135;  
Ames vs. Kansas, 111 U. S. 449;  
Virginia Coupon Cases, 114 U. S. 270;  
Smith vs. Kansas City Title & Trust Co., 255  
U. S. 199; 65 Law Ed. 585;  
Texas vs. Lewis, 14 Fed. 65;  
U. S. vs. Louisiana, 123 U. S. 33; 127 U. S. 67;  
Jones vs. Reed, 3 Wash. 60;  
Johnson vs. Lankford, 245 U. S. 544;



Hopkins vs. Clemson Agricultural College, 221 U. S. 635;

Davenport vs. U. S. 19 Law Ed. 704;

Holt Co. vs. National Life Ins. Co., 25 C. C. A. 475;

Graham vs. Folsom, 200 U. S. 248; [19]

Gunter vs Atl. Coast Line R. Co.,

200 U. S. 273, 4; 50 Law Ed. 478;

Morrill vs. Am. Reserve Bond Co.,

151 Fed. 305;

Nashville vs. Cooper, 6 Wall. 247;

(73 U. S.) 18 Law Ed. 851;

Respondents cite and reply upon:

Board of Liquidation vs. McComb,

92 U. S. 531 at 541;

Antoni vs. Greenhow, 107 U. S. 769, at 783;

In re Ayers, 123 U. S. 443;

Pennoyer vs. McConnaughy, 140 U. S. 1, at 9, 10; 11 & 12;

Fitts vs. McGhee, 172 U. S. 516 at 524, 525; 528 & 529;

Lankford vs. Platte Iron Works, 235 U. S. 461;

Louisiana vs. Jumel, 107 U. S. 711 at 718, 720; 721 & 722;

Smith vs. Reeves, 178 U. S. 436 at 438;

Johnson vs. Lankford, 245 U. S. 541 at 545;

Edward Clifford, Superintendent, etc., vs. Thomas W. Miller, 288 Fed. 537;

Miller, Alien Property Custodian vs. Rouse, 276 Fed. 715 at 716;

In these two cases, the Alien Property Custodian sues. In the one case, the Court is asked to



direct the Treasurer of the State of Washington to pay the relator the amount due on certain warrants in his possession, drawn upon the Accident Fund, which fund is held by the State Treasurer under the Workmen's Compensation Act of the State. The warrants and claims represented are alleged to be due former alien enemies or the allies of alien enemies of the United States. In the other case, the Court is asked to direct the State Auditor to audit a certain voucher upon such fund covering like claims, issued relator by [20] the Department of Labor and Industries of the State of Washington and to issue relator a warrant upon the State Treasurer for payment thereof.

Respondents demur generally and upon the ground that the Court has no jurisdiction.

While these cases grow out of matters involved in Edward Clifford, Superintendent, etc., vs. Miller, Custodian (288 Fed. 537), they are not ancillary to that cause.

Section 24 of the Workmen's Compensation Act (Sec. 7703 Remington's Comp. Stats. 1922) in part provides:

"The director of labor and industries shall, in accordance with the provisions of this Act:

"(2) Ascertain and establish the amounts to be paid into and out of the accident fund.

"(3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

"(5) Issue proper receipts for moneys re-

ceived, and certificates for benefits accrued and accruing.”

Section 26 of the Act (Sec. 7705 Rem. Comp. Stats.) provides:

“Disbursements out of the funds shall be made only upon warrants drawn by the State Auditor upon vouchers therefor transmitted to him by the Department and audited by him. The State Treasurer shall pay every warrant out of the fund upon which it is drawn.  
\* \* \*

The statute defining generally the duties of the State Auditor provides, among others:

“It shall be the duty of the Auditor;

1. To audit, adjust and settle all claims against the State, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers or persons. \* \* \*

16. In his discretion, to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.  
\* \* \* ” (Sec. 9007 Rem. & Bal. Code).

By Section 9013 Rem. & Bal. Code, it is provided: [21]

“All persons having claims against the State shall exhibit the same, with the evidence in support thereof, to the Auditor to be audited, settled, and allowed within two years after such claim shall have accrued, and not afterwards.”

While Section 9019 (Rem. & Bal. Code) provides:

“The Auditor, whenever he may think it necessary in the settlement of any account or the drawing of any warrant, may examine the party, witnesses and others on oath or affirmation touching any matter material to be known in the settlement of the account or the drawing of the warrant, and for that purpose he may issue summons and compel witnesses to attend before him and give testimony in the same manner and by the same means allowed in courts of record, and he shall reduce such evidence to writing and file the same in his office.”

On the part of the relator it is contended that under Section 7705, Remington's Compiled Stats., *supra*, the duties of the Auditor concerning the issuing of a warrant are purely ministerial; that all discretion in the matter is exhausted when the Director has, under Section 7703, Remington's Comp. Stats., ascertained and established the amounts to be paid and issued a certificate for benefits accrued.

The Court is constrained to give effect to each word of the statute, unless to do so would clearly tend to defeat or impair the legislative intent. The Court cannot say, in view of the language of Section 7705, but that it was intended the Auditor should exercise a supervisory power and discretion concerning the acts of the Director, or it may have been intended that he, in his discretion, should consider matters supplemental to the Auditor's de-

termination, as in case of death of a beneficiary after certificate or voucher issued. In either event, he is vested with a discretion in the matter.

It has been contended that these cases arising under the Constitution and Laws of the United States, the jurisdiction of this Court is original and that of the Supreme Court appellate. If that were all that was to be taken into account, the position [22] would be unassailable, but the controlling questions are whether, the Court being asked to control the discretion of these State officers, the suits are not, in effect, suits against the State, and whether, the Court being asked to control the discretion of these State officers, the suits are not, in effect, suits against the State, and whether the provisions of the Trading with the Enemy Act show an intention to confer on this Court power so to do.

The State Auditor and State Treasurer are, by the State Constitution, made executive officers of the State of Washington. (Art. 3, Sec. 1.) The acts, the performance of which the Court is asked to compel them to do, are not at all in their own, individual interest, but solely for the State. The suits are, therefore, to be considered as against the State.

Lankford vs. Platte Iron Works,

235 U. S. 461;

Louisiana vs. Jumel, 107 U. S. 711;

Smith vs. Reeves, 178 U. S. 436.

While the question is one of jurisdiction of the Court, the following considerations are not deemed out of place:

Under the State Constitution and Law, it may be that the proper State court, by mandamus, could decree payment of the warrants by the Auditor. (State ex rel. Gillette vs. Claussen, 44 Wash. 437); but the question before this Court is not solved by that concession.

Relator in the suit against the Auditor relies upon the case of State ex rel. Gillette vs. Claussen, *supra*; but in that case it is said:

“Under the old practice in mandamus the question whether an auditing officer against whom a writ of mandamus was sought acted in a purely ministerial capacity, or whether he exercised judgment and discretion in the settlement and adjustment of claims presented to him, was one of controlling importance, as the writ would lie in the former case but not in the latter. Under the practice in this State, however, the question whether the officer acts in a purely ministerial capacity or whether he exercises judgment and discretion, seems [23] to be one of little moment, except in so far as it may serve as a guide for the officer himself in the discharge of his official duties.

“This Court has repeatedly held that a mandamus proceeding under our statute possesses all of the elements of a civil action, and that it is no defense to the writ to show that the officer



to whom the writ is directed exercised judgment and discretion and acted in good faith in the disallowance of the claim upon which the application for the writ is based. If any part of the relief to which the petitioner is entitled is by writ of mandamus the Court will try out all incidental questions in the mandamus proceeding." (At pp. 442 & 443.)

The authority of the District Court of the United States, at least where the jurisdiction rests, not upon diversity of citizenship, but, in a case such as the present one, upon the fact that the controversy arises under the Constitution and Laws of the United States, does not extend as far as that of the State Court under its law as construed in the foregoing opinion. By Section 262 of the Judicial Code (Sec. 1239 Comp. Stats.) the Court is authorized to

"issue all writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law:"

In mandamus proceedings the Conformity Statute does not apply,—at least as to the scope of the remedy.

Rosenbaum vs. Bauer,

120 U. S. 450;

Board of Liquidation vs. U. S.,

108 Fed. 689;

47 C. C. A. 587;

Cares vs. N. W. Nat. Bldg., L. I. Ass'n,

55 Fed. 209.

Under its general jurisdiction, this Court may not, by mandamus, control such state officer in the exercise of his discretion; nor take money from the Treasury of the State.

Clifford vs. Miller, 288 Fed. 537.

The remaining question is not whether the Custodian has the [24] right to the possession of the money seized, but withheld by the Treasurer in the one case, or whether he has the right to the warrants which the Auditor refuses to issue in the other. The question now for determination is whether, by the Trading with the Enemy Act, this Court has been given special jurisdiction and authority to determine what right and decree delivery to the Custodian of the money and the issuance and delivery to him of the warrants.

By Section 6 of The Trading with the Enemy Act (Sec. 3115½ cc Comp. Stats.) it is provided:

“The president is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed \$5,000 per annum) of an official to be known as the Alien Property Custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said Custodian under the provisions of this Act; and to hold, administer and account for the same under the general direction of the President and as provided in this Act.”

Section 7 (Section 3115½d Comp. Stats.) in part provides: “(c) If the President shall



so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

\* \* \* \* \*

“The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him, shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Cus-

todian or by the Treasurer of the United States. [25]

\* \* \* \* \*

“(e) No *person* shall be held liable in any Court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.”

Section 3115½ i provides:

“The district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled, ‘An Act to codify, revise and amend the laws relating to the Judiciary’.”

Section 3115½aa provides:

“The word ‘*PERSON*,’ as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or *BODY POLITIC*.” (Italics those of the Court.)

Unless the words “body politic” occurring in the last quoted section were meant to include a State of the Union, as well as a municipality, there would, without question, be no authority for these

proceedings. It has been held that the words "body politic" used in certain statutes include a State. (*Ervin vs. State*, 48 N. E. 249 at 251; 115 Ind. 332.) In holding that the United States could make a contract not previously directed by statute, Marshall, as Circuit Justice, held (*Fed. Case No. 15, 747*):

"The United States is a government and consequently a body politic and corporate capable of obtaining the objects for which it was created by the means which are necessary for the attainment."

It is well understood that this is a possessory suit, a seizure or capture on land, and that, as provided in the Act, the rights of all interested are to be determined after the surrender of possession.

Under its war powers, Congress doubtless could confer upon a District Judge authority to coerce a sovereign State and its officers, but that it so intended is not lightly to be concluded [26] in the absence of positive and express congressional enactment,—particularly so in view of the provisions of Section 233 of the Judicial Code (Section 1210 Comp. Stats.), which provides:

"The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive jurisdiction."

This statute is controlling of this question, despite the fact that the present suit may not be purely a controversy of a civil nature. The dignified treatment and consideration due a sovereign State form no small part of the reason that has actuated the law making powers in making a State subject alone to the jurisdiction of the Supreme Court. An implied repeal of the law conferring, so far as the Courts of the United States are concerned, exclusive jurisdiction on the Supreme Court of suits against a State is not to be sanctioned, in view of the long established recognition of this principle in the history of the doctrine of State's rights.

The demurrers are sustained for want of jurisdiction.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. July 14, 1923. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [27]

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[Title of Court and Cause.]

No. 4116.

### **Judgment of Dismissal.**

This cause coming on for hearing on the 25th day of June, 1923, upon the return of the alternative writ of mandamus issued herein, the plaintiff and relator appearing by Wallace W. Mount, assistant United States district attorney, and by H. G. Rowland, attorney for and representative of the relator, and Dix H. Rowland of counsel for the defendant

and relator appearing by John H. Dunbar, attorney general for the State of Washington, and M. H. Wight, assistant attorney general for the State of Washington, and Guie and Halverstadt, counsel, and the said defendants and relators having been duly and regularly served with the affidavit and petition in said action and the alternative writ of mandamus as by order of Court provided and having appeared and filed a special appearance and also a demurrer to the affidavit and petition of the plaintiff and relator alleging as one of the grounds of the said demurrer that it appeared upon the face of the said petition and affidavit that the above-named court has no jurisdiction of the defendant and respondent or of the subject matter of the action and also that the petition and affidavit did not state facts sufficient to constitute a cause of action and the court having heard the arguments of counsel for the relator and respondent and having taken the matter under advisement and having heretofore entered a memorandum decision sustaining the [28] said demurrer of the defendant and respondent for the reason that it appeared on the face of the affidavit and petition of plaintiff and relator that this Court has no jurisdiction to hear and determine said cause and the plaintiff and relator having elected to stand upon his said affidavit and petition for a writ of mandamus and not to plead further

IT IS THEREFORE ORDERED that the said demurrer be and the same is sustained for want of jurisdiction and the said action be and the same is



hereby dismissed for want of jurisdiction in the Court to hear and determine the same to all of which the plaintiff and relator excepts and his exception is duly allowed. Dated this 17th day of July, 1923.

EDWARD E. CUSHMAN,

Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. July 17, 1923. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [29]

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[Title of Court and Cause.]

No. 4116.

**Petition for Writ of Error.**

To the Hon. Edward E. Cushman, Judge of the District Court aforesaid:

Now comes the United States of America on the relation of Thomas W. Miller, Alien Property Custodian of the United States of America, by Wallace W. Mount, Assistant United States District Attorney, attorney for the relator, and Harry G. Rowland, attorney for and representative of the relator, and respectfully shows that on the 17th day of July, 1923, the Court entered final judgment of dismissal herein for lack of jurisdiction against petitioner and in favor of C. W. Clausen, State Auditor of the State of Washington.

Your petitioner feeling himself aggrieved by said judgment entered therein as aforesaid herewith

petitions the Court for an order allowing him to prosecute a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit under the laws of the United States in such cases made and provided.

Wherefore, premises considered, your petitioner prays that a writ of error do issue that an appeal in this behalf to the United States Circuit Court of Appeals aforesaid sitting at San Francisco, [30] California, in said circuit for the correction of the errors complained of and herewith assigned, be allowed and that all further proceedings may be suspended until the determination of the said writ of error by the Circuit Court of Appeals of the United States.

W. W. MOUNT,

Assistant United States District Attorney, and

HARRY G. ROWLAND,

Attorneys for Petitioners in Error.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 18, 1923. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [31]

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[Title of Court and Cause.]

No. 4115.

**Assignments of Error.**

To the Hon. Edward E. Cushman, Judge of the District Court aforesaid:

Now comes the United States of America on the



relation of Thomas W. Miller, Alien Property Custodian of the United States of America, plaintiff and relator, by Wallace W. Mount, Assistant United States District Attorney, attorney for relator, and Harry G. Rowland, attorney for and representative of the relator, in the above numbered and entitled cause and in connection with its petition for a writ of error in this cause assigns the following errors which plaintiff in error avers occurred on the hearing thereof, and upon which it relies to reverse the judgment entered herein, as appears of record:

#### FIRST.

That the United States District Court for the Western District of Washington, Southern Division, erred in holding that the District Court did not have jurisdiction of the defendant and respondent and of the subject matter of the action and for that reason erred in sustaining the demurrer of the defendant and respondent to the petition and affidavit of plaintiff and relator filed in this cause.

#### SECOND.

That the said District Court erred in entering a judgment [32] of dismissal in favor of defendant and respondent and against plaintiff and relator for lack of jurisdiction.

#### THIRD.

The said District Court erred in not granting plaintiff and relator a peremptory writ of mandamus against the defendant and respondent upon the return of the alternative writ issued herein.

WHEREFORE, plaintiff in error prays that judgment of said Court be reversed and that the said District Court be instructed to proceed with the hearing of said action and issue a peremptory writ of mandamus directed to the defendant and respondent as prayed for in plaintiff's affidavit and petition.

W. W. MOUNT,  
Assistant United States District Attorney, and  
HARRY G. ROWLAND,  
Attorneys for Plaintiff and Relator in Error.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 18, 1923. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [33]

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In the District Court of the United States for the  
Western District of Washington, Southern  
Division

No. 4116.

THE UNITED STATES OF AMERICA, on the  
Relation of THOMAS W. MILLER, Alien  
Property Custodian of the United States of  
America,

Plaintiff and Relator,  
vs.

C. W. CLAUSEN, State Auditor of the State of  
Washington,  
Defendant and Respondent.

**Order Granting Writ of Error.**

Now, on this 20th day of August, 1923, it is ordered that a writ of error be granted the plaintiff and relator in the above-entitled action in accord with the prayer of his petition filed herein.

FRANK S. DIETRICH,  
District Judge of the United States for the Western  
District of Washington, Southern Division.

Copy of order granting writ of error acknowledged this 20th day of August, 1923.

JOHN H. DUNBAR,  
Attorney General,  
M. H. WIGHT,  
Assistant Attorney General,  
Attorneys for Defendant and Respondent.  
GUIE & HALVERSTADT,  
Counsel for Defendant and Respondent.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 20, 1923. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [34]

In the District Court of the United States for the  
Western District of Washington, Southern  
Division.

No. 4116—"Lodged."

THE UNITED STATES OF AMERICA, on the  
Relation of THOMAS W. MILLER, Alien  
Property Custodian of the United States of  
America,

Plaintiff and Relator,

vs.

C. W. CLAUSEN, State Auditor of the State of  
Washington,

Defendant and Respondent.

**Writ of Error.**

United States of America,

Western District of Washington,—ss.

The President of the United States of America to  
the Honorable E. E. Cushman, Judge of the  
District Court of the United States for the  
Western District of Washington, Southern  
Division, GREETING:

Because in the records and proceedings, as also  
in the rendition of the judgment of a plea which is  
in the District Court before you, between the United  
States of America on the relation of Thomas W.  
Miller, Alien Property Custodian of the United  
States of America, plaintiff and relator in error,  
and C. W. Clausen, State Auditor of the State of  
Washington, defendant and respondent in error, a

manifest error has happened to the damage of the United States of America on the relation of Thomas W. Miller, Alien Property Custodian of the United States of America, plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that under your seal you send the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so [35] that you have the same at San Francisco, in the State of California, where said Court is sitting, within thirty days of the date hereof, in the said Circuit Court of Appeals, to be then and there held, and the records and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right according to the laws and customs of the United States should be done.

WITNESS The Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this the 20th day of August, A D. 1923.

F. M. HARSHBERGER,

Clerk.

By Ed. M. Lakin,

Deputy Clerk.

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Clerk of the United States District Court, for the  
Western District of Washington, Southern  
Division.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 20, 1923. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [36]

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In the District Court of the United States for the Western District of Washington, Southern Division.

? No. 4116—"LODGED."

THE UNITED STATES OF AMERICA, On the Relation of THOMAS W. MILLER, Alien Property Custodian of the United States of America,

Plaintiff and Relator,

vs.

C. W. CLAUSEN, State Auditor of the State of Washington,

Defendant and Respondent.

**Citation to Defendant in Error.**

The United States of America to C. W. Clausen, State Auditor of the State of Washington, GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, California, in said Circuit, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western District of Wash-



ington, Southern Division, wherein the United States on the relation of Thomas W. Miller, Alien Property Custodian of the United States of America is plaintiff and relator in error, and you are the defendant and respondent in error, to show cause, if any there be, why the judgment rendered against the said plaintiff and relator in error as in the writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable FRANK S. DIETRICH, Judge of the United States District Court, at Tacoma, within said District, this 20th day [37] day of August, in the year of our Lord one thousand nine hundred and twenty-three.

FRANK S. DIETRICH,  
Judge of the District Court of the United States  
for the Western District of Washington,  
Southern Division.

Attest: [Seal U. S. Dist. Court.] F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy Clerk of the United States District Court for the Western District of Washington, Southern Division.

Receipt of a copy and service of the foregoing citation this 20th day of August, 1923, is hereby admitted.

JOHN H. DUNBAR,  
Attorney General,  
M. H. WIGHT,  
Assistant Attorney General,  
GUIE & HALVERSTADT,  
Attorneys for the Defendant and Respondent.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 20, 1923. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [38]

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No. 4116.

[Title of Court and Cause.]

**Stipulation Re Printing Record.**

It is hereby stipulated between the plaintiff and relator and the defendant and respondent, through their respective attorneys, that the following designated papers comprise all the papers, exhibits and proceedings which are necessary to the hearing of the cause upon writ of error to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Petition and affidavit for writ of mandamus.
2. Order for alternative writ of mandamus.
3. Alternative writ of mandamus.
4. Demurrer of defendant and respondent to affidavit and petition of plaintiff and relator.
5. Opinion of the District Court sustaining the defendant's and respondent's demurrer to plaintiff's affidavit and petition herein.
6. Decree and judgment of dismissal.
7. Petition for writ of error.
8. Plaintiff's and relator's assignment of errors.
9. Order granting writ of error.
10. Writ of error.
11. Citation to defendant in error.

12. Stipulation omitting titles and captions and omitting from the record copy of Exhibit "A." [39]
13. This praecipe.
14. Clerk's certificate.

It is further stipulated that in preparing the printed record all captions and titles, except upon writ of error, citation to defendant in error, and order allowing writ of error, may be omitted and that Plaintiff's Exhibit "A" attached to his petition and affidavit need not be printed in the record.

W. W. MOUNT,

Assistant United States District Attorney,

HARRY G. ROWLAND,

Attorney for and Representative of Relator, Attorneys for Plaintiff and Relator.

JOHN H. DUNBAR,

Attorney General,

M. H. WRIGHT,

Assistant Attorney General,

GUIE & HALVERSTADT,

Attorneys for Defendant and Respondent.

[Endorsed]: Filed in the United States District Court Western District of Washington, Southern Division. Aug. 20, 1923. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy. [40]

No. 4116.

[Title of Court and Cause.]

**Praeipice for Transcript of Record.**

United States of America,

Western District of Washington,—ss.

To the Clerk of the Above-entitled Court, GREET-  
ING:

Please make duly authenticate, and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, a transcript of the record on appeal in the above-entitled cause to include the following:

First.

Petition and affidavit for writ of mandamus.

Second.

Order for alternative writ of mandamus.

Third.

Alternative writ of mandamus.

Fourth.

Demurrer of Defendant and respondent to affidavit and petition of plaintiff and relator.

Fifth.

The opinion of the District Court sustaining defendant's and respondent's demurrer to plaintiff's petition and affidavit herein.

Sixth.

Decree and judgment of dismissal.

Seventh.

Petition for writ of error.

Eighth.

Plaintiff's and relator's assignments  
of error.

Ninth.

Order granting writ of error.

Tenth.

Writ of error.

Eleventh.

Citation to defendant in error.

Twelfth.

Stipulation omitting titles and cap-  
tions, and omitting from the record  
copy of Exhibit "A." [41]

Thirteenth.

This praecipe.

Fourteenth.

Clerk's certificate.

W. W. MOUNT,

Assistant United States District Attorney and

HARRY G. ROWLAND,

Representative of Alien Property Custodian, At-  
torneys for Plaintiff and Relator.

[Endorsed]: Filed in the United States District  
Court Western District of Washington, Southern  
Division. Aug. 20, 1923. F. M. Harshberger,  
Clerk. By Ed. M. Lakin, Deputy. [42]

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

United States of America,  
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing is a true and correct copy of the record and proceedings in the case of the United States of America on the relation of Thomas W. Miller, Alien Property Custodian of the United States of America, Plaintiff and relator, versus C. W. Clausen, State Auditor of the State of Washington, defendant and respondent, Cause No. 4116, as required by the praecipe of counsel filed and shown herein, as the originals thereto appear on file and of record in my office in said District of Tacoma.

I further certify and return that I hereto attach and transmit the original writ of error and the original Citation to Defendant in Error.

Attest my hand and the seal of said District Court, at Tacoma, in said District, this 22d day of August, A. D. 1923.

[Seal]

F. M. HARSHBERGER,  
Clerk.

By Ed. M. Lakin,  
Deputy Clerk. [43]



In the District Court of the United States for the  
Western District of Washington, Southern  
Division.

No. 4116.

THE UNITED STATES OF AMERICA, on the  
Relation of THOMAS W. MILLER, Alien  
Property Custodian of the United States of  
America,

Plaintiff and Relator,

vs.

C. W. CLAUSEN, State Auditor of the State of  
Washington,

Defendant and Respondent.

**Writ of Error.**

United States of America,  
Western District of Washington,—ss.

The President of the United States of America to  
the Honorable E. E. Cushman, Judge of the  
District Court of the United States for the  
Western District of Washington, Southern  
Division, GREETING:

Because in the records and proceedings, as also  
in the rendition of the judgment of a plea which is  
in the District Court before you, between the United  
States of America on the relation of Thomas W.  
Miller, Alien Property Custodian of the United  
States of America, plaintiff and relator in error,  
and C. W. Clausen, State Auditor of the State of  
Washington, defendant and respondent in error,

a manifest error has happened to the damage of the United States of America on the relation of Thomas W. Miller, Alien Property Custodian of the United States of America, plaintiff in error, as by said complaint, appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that under your seal you send the records and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, in the State of California, where said Court is sitting, within thirty days of the date hereof, in the said Circuit Court of Appeals, to be then and there held, and the records and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right according to the laws and customs of the United States should be done.

WITNESS The Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this the 20th day of August, A. D. 1923.

[Seal]

F. M. HARSHBERGER,

Clerk.

By Ed. M. Lakin,

Deputy.

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Clerk of the United States District Court for the  
Western District of Washington, Southern  
Division.

Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 20, 1923. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy.

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In the District Court of the United States for the Western District of Washington, Southern Division.

No. 4116.

THE UNITED STATES OF AMERICA, on the Relation of THOMAS W. MILLER, Alien Property Custodian of the United States of America,

Plaintiff and Relator,

vs.

C. W. CLAUSEN, State Auditor of the State of Washington,

Defendant and Respondent.

**Citation to Defendant in Error.**

The United States of America to C. W. Clausen, State Auditor of the State of Washington,  
GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, California, in said Circuit, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Western District of Washington, Southern Di-

vision, wherein The United States on the relation of Thomas W. Miller, Alien Property Custodian of the United States of America, is plaintiff and relator in error, and you are the defendant and respondent in error, to show cause, if any there be, why the judgment rendered against the said plaintiff and relator in error as in the Writ of Error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Hon. FRANK S. DIETRICH, Judge of the United States District Court, at Tacoma, within said District, this 20th day of August, in the year of our Lord one thousand nine hundred and twenty-three.

FRANK. S. DIETRICH,  
Judge of the District Court of the United States  
for the Western District of Washington, Southern Division.

Attest:

[Seal]

F. M. HARSHBERGER,

Clerk.

By Ed. M. Lakin,  
Deputy Clerk of the United States District Court  
for the Western District of Washington, Southern Division.

Receipt of a copy and service of the foregoing Citation this 20th day of August, 1923, is hereby admitted.

JOHN H. DUNBAR,

Attorney General,

M. H. WIGHT,

Assistant Attorney General,

GUIE & HALVERSTADT,

Attorneys for the Defendant and Respondent.

Filed in the United States District Court, Western District of Washington, Southern Division. Aug. 20, 1923. F. M. Harshberger, Clerk. By Ed. M. Lakin, Deputy.

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[Endorsed]: No. 4083. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America on the Relation of Thomas W. Miller, Alien Property Custodian of the United States of America, Plaintiff in Error, vs. C. W. Clausen, as State Auditor of the State of Washington, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.

Filed August 23, 1923.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

